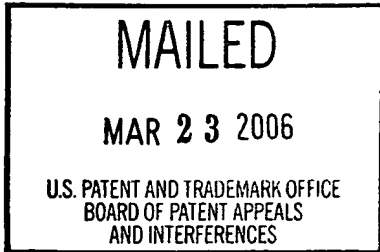


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte NATASHA P. HIXON and MARK A. HIXON

Application No. 09/864,723

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences (BPAI) on March 4, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the Examiner's Answer mailed October 19, 2005, indicate that the answer does not fully comply with the headings as set forth under 37 CFR § 41.37 (c). Specifically, the heading "**(8) Evidence Relied Upon**" lacks the content pertinent to it. The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) states in part:

Briefs must comply with 37 CFR [§] 41.37, and all examiner's answers filed in response to such must comply with the guidelines set forth below.

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e-g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

The examiner states under his heading (8) in his answer that "No evidence is relied upon by the examiner in the rejection of the claims under appeal", however the examiner relies upon multiple prior art patents in his §§ 102 and 103 rejections of the appealed claims. Hence, these references should be listed under heading (8). Correction is required.

Another issue that needs to be resolved in this appeal is appellants' Evidence Appendix in the Appeal Brief filed July 27, 2005. On page 21 of the brief appellants states that a "Declaration and other evidence [] accompanies this Appeal Brief". Likewise, appellants evidence appendix states that "A DECLARATION OF ERIC J. RUFF is submitted herewith". However, the copy of the Appeal Brief filed July 27, 2005 in the electronic Image File Wrapper (IFW) of the application does not have a copy of the declaration attached. Although, it is noted that the examiner in the answer mailed October 19, 2005, denied entry of the Ruff Declaration, all evidence relied upon by appellant, needs to be provided and as noted above, the declaration is listed as being attached to the brief.

Application No. 09/864,723

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to issue a revised Examiner's Answer that complies with the requirements of heading "(8) *Evidence Relied Upon*" as noted above, and
- 2) to have the discrepancy in the Evidence Appendix of appellants brief filed July 27, 2005, corrected, and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



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